UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT G.,

Plaintiff,

v. 5:19-CV-0576 (ML)

ANDREW SAUL,
Commissioner of Social Security Administration,

Defendant.

APPEARANCES: OF COUNSEL:

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SOCIAL SECURITY ADMINISTRATION
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AMELIA STEWART, ESQ.
ARIELLA R. ZOLTAN, ESQ.

MIROSLAV LOVRIC, United States Magistrate Judge

ORDER

Currently pending before the Court in this action, in which Plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), are cross-motions for judgment on the pleadings.[1] Oral argument was heard in connection with those motions on July 27, 2020, during a telephone

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[1] This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

conference conducted on the record. At the close of argument, I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination is not supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by Plaintiff in this appeal.

After due deliberation, and based upon the Court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is

ORDERED as follows:

1) Plaintiff's motion for judgment on the pleadings (Dkt. No. 12) is GRANTED.

2) The Commissioner's determination that Plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is VACATED.

3) This matter is REMANDED to the Commissioner, without a directed finding of disability, for further administrative proceedings consistent with this opinion and the oral bench decision, pursuant to sentence four of 42 U.S.C. § 405(g).

4) The Clerk of Court is respectfully directed to enter judgment, based upon this determination, REMANDING this matter to the Commissioner for further administrative proceedings consistent with this opinion and the oral bench decision, pursuant to sentence four of 42 U.S.C. § 405(g) and closing this case.

Dated: August 4, 2020
Binghamton, New York

Miroslav Lovric
United States Magistrate Judge
Northern District of New York

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ROBERT G.,

Plaintiff,

-v- 19-CV-576

ANDREW SAUL, COMMISSIONER OF SOCIAL SECURITY,

Defendant.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE MIROSLAV LOVRIC
July 27, 2020
15 Henry Street, Binghamton, New York

For the Plaintiff:
(Appearance by telephone)

LEGAL AID SOCIETY OF MID-NEW YORK, INC.
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(The Court and all parties present by telephone. Time noted: 10:16 a.m.)

THE COURT: So first, by way of introduction, this matter was referred to me, for all proceedings and entry of a final judgment, pursuant to the Social Security Pilot Program, here in the Northern District of New York, pursuant to General Order No. 18, also in accordance with the provisions of Title 28 U.S.C. Section 636(c), and then additionally, Federal Rule of Civil Procedure 73, in the Northern District of New York, Local Rule 73.1, and then lastly, the consent of the parties. This action involves judicial view of an adverse determination by the Commissioner of Social Security, pursuant to 42, United States Code, Sections 405(g) and 1383(c)(3).

In this appeal, I have reviewed the following: The Social Security Administrative Record and transcript found at Docket No. 11, including the Administrative Law Judge's hearing decision and transcript of oral hearing, and that's found at Administrative Transcript -- which I'll refer to in these proceedings simply by the letter T -- that's found at T. 12 through 28 and 154 to 194. I've also reviewed the plaintiff's brief at Docket No. 12, the defendant's brief at Docket No. 16, and I also generally reviewed the other entries on the docket. And then lastly, I have taken into consideration today's oral arguments from the parties that was presented a few moments ago.

I find the procedural history of this case as

follows: The plaintiff filed for DIB benefits on January 29, 2016, alleging disability beginning on May 29, 2015, see T. 15. The claim was denied initially on April 28, 2016, it can be found at T. 209 to 214. On May 23, 2016, plaintiff requested a hearing before an Administrative Law Judge, see T. 15 and 216. The hearing was held in front of ALJ Kenneth Theurer on February 12, 2018, see T. 15 and also 154 to 194. Additionally, Andrew Caporale, a vocational expert that I'll refer to as VE, also appeared and testified at the hearing. On March 28, 2018, the ALJ issued an unfavorable decision as to plaintiff, see T. 12 through 28. The ALJ utilized the five-step process for evaluating disability claims, see T. 15 through 24, and found that plaintiff was not disabled from the alleged onset date through the date of the decision, March 28th of 2018, because, according to the ALJ, plaintiff was capable of performing jobs that existed in significant numbers in the national economy, T. 23 to 24, see also 20 C.F.R. Section 404.1520(a)(4)(i)-(v) describing the steps in the sequential evaluation. See also 20 C.F.R. Section 404.1566(b), if the claimant can perform work in the national economy, he is not disabled.

Plaintiff requested review of the hearing decision before the Appeals Council on May 29, 2018, T. 277. On March 29, 2019, the Appeals Council denied the request for review, T. 1 through 6, after which time the Commissioner's determination became final and this appeal followed.

I want to generally state applicable law that I'm applying in reviewing this appeal. First, the disability standard. To be considered disabled, a plaintiff seeking disability insurance benefits, or SSI disability benefits, must establish that she is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, see 42 U.S.C. Section 1382C(a)(3)(A). In addition, the plaintiff's physical or mental impairment or impairments must be of such severity that he is not only unable to do previous work, but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work, see 42 U.S.C. Section 1382c(a)(3)(B).

The Commissioner uses a five-step process, set forth in 20 C.F.R. Sections 404.1520 and 416.920, to evaluate disability insurance and SSI disability claims.

First, these steps are as follows in summary: First, the Commissioner considers whether the claimant is currently engaged in substantial gainful activity. If he is not, the Commissioner next considers whether the claimant has a severe

impairment which significantly limits his physical or mental ability to do basic work activities. If the claimant suffers such an impairment, the third inquiry is whether, based solely on medical evidence, the claimant has an impairment which meets or equals the criteria of an impairment listed in Appendix 1 of the regulations. If the claimant has such an impairment, the Commissioner will consider him disabled without considering vocational factors such as age, education, and work experience. Assuming the claimant does not have a listed impairment, the fourth inquiry is whether, despite the claimant's severe impairment, he has the residual functional capacity to perform his past work. Finally, if the claimant is unable to perform his past work, the Commissioner then determines whether there is other work which the claimant can perform, see *Berry v. Schweiker*, 675 F.2d 464 at 467, Second Circuit, 1982, see also 20 C.F.R. Sections 404.1520 and 416.920.

The plaintiff has the burden of establishing disability at the first four steps. However, if the plaintiff establishes that her impairment prevents her from performing her past work, the burden then shifts to the Commissioner to prove the final step.

The second area of law that I have applied and keep in mind is the scope of my review. In reviewing a final decision of the Commissioner, a court must determine whether the correct legal standards were applied and whether substantial

evidence supported the decision, see *Selian v. Astrue*, 708 F.3d 406 at 417, Second Circuit, 2013, see also *Brault v. Social Security Administration Commissioner*, 683 F.3d 443 at 448, Second Circuit, 2012, additionally see 42 U.S.C. Section 405(g). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, see *Talavera v. Astrue*, 697 F.3d 145 at 151, Second Circuit, 2012. It must be more than a scintilla of evidence scattered throughout the administrative record. However, this standard is a very deferential standard of review, even more so than the clearly erroneous standard, see *Brault,* 683 F.3d at 448.

To determine on appeal whether an ALJ's findings are supported by substantial evidence, a reviewing court considers the whole record, examining the evidence from both sides, because an analysis of the substantiality of the evidence must also include that which detracts from its weight, see *Williams on behalf of Williams v. Bowen*, 859 F.2d 255 at 258, Second Circuit, 1988. However, a reviewing court may not substitute its interpretation of the administrative record for that of the Commissioner, if the record contains substantial support for the ALJ's decision, see also *Rutherford v. Schweiker*, 685 F.2d 60 at 62, Second Circuit, 1982. In reviewing a final decision by the Commissioner under 42 U.S.C. 405, the Court does not determine de novo whether a plaintiff is disabled, see 42 U.S.C. Sections 405(g), 1383(c)(3), and see also *Wagner v. Secretary of Health*

and Human Services at 906 F.2d 856 at 860, Second Circuit, 1990. Rather, the Court must examine the Administrative Transcript to ascertain whether the correct legal standards were applied, and whether the decision is supported by substantial evidence, see *Shaw v. Chater*, 221 F.3d 126 at 131, Second Circuit, 2000, also *Schaal v. Apfel*, 134 F.3d 496, at 500 to 501, Second Circuit, 1998.

Substantial evidence is evidence that amounts to more than a mere scintilla, and it has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, *Richardson v. Perales*, 402 U.S. 389, at 401, 1971. If supported by substantial evidence, the Commissioner's factual determinations are conclusive, and it is not permitted for the courts to substitute their analysis of the evidence, see *Rutherford v. Schweiker*, 685 F.2d 60, at 62, Second Circuit, 1982, essentially stating that the court would be derelict in our duties if we simply paid lip service to this rule, while shaping the Court's holding to conform to our interpretation of this evidence. In other words, this Court must afford the Commissioner's determination considerable deference, and may not substitute its own judgment for that of the Commissioner, even if it might justifiably have reached a different result upon a de novo review, see *Valente v. Secretary of Health and Human Services*, 733 F.2d 1037, at 1041, Second Circuit, 1984.

An ALJ is not required to explicitly analyze every piece of conflicting evidence in the record, see example *Mongeur v. Heckler*, 722 F.2d 1033, at 1040, Second Circuit, 1983, also see *Miles v. Harris*, 645 F.2d 122, at 124, Second Circuit, 1981. We are unwilling to require an ALJ explicitly to reconcile every conflicting shred of medical testimony. However, the ALJ cannot pick and choose evidence in the record that supports his conclusions, see *Cruz v. Barnhart*, 343 F. Supp. 2d 218, at 224, Southern District of New York, 2004, see also *Fuller v. Astrue*, 09-CV-6279, and that can be found at 2010 WL 5072112 at *6, Western District of New York, December 6, 2010.

In reviewing this case, I point out the following general facts: Plaintiff was born on May 2, 1967, making him 48 years old on the alleged onset and application dates, and 50 years old on the date of the ALJ's decision; plaintiff reported having at least a high school education and is able to communicate in English; plaintiff had past work as a meat cutter, a deli cutter/slicer, and as a hand packager.

In summary, the ALJ found as follows in the decision: First, the claimant meets -- and these are the ALJ's findings. The claimant meets the insured status requirements of the Social Security Act through December 31, 2020. The claimant has not engaged in substantial gainful activity since May 29, 2015, the alleged onset date, see 20 C.F.R. 404.1571. Third, the claimant has the following severe impairments: Arthritis in the knees;

tendonitis in the shoulders; chronic obstructive pulmonary disease, also known as COPD; and depression and anxiety, see 20 C.F.R. 404.1520(c), which significantly limit the ability to perform basic work activities as required by SSR 85-28.

Next, the ALJ found the claimant does not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1, see 20 C.F.R. 404.1520(d), also 404.1525, and lastly, 404.1526. The ALJ went on to state, after careful consideration of the entire record, the ALJ concluded that the claimant has the residual functional capacity to perform less than the full range of light work as defined in 20 C.F.R. 404.1567(b), with ability to occasionally lift and carry 20 pounds, frequently lift and carry 10 pounds; sit for up to 6 hours; stand or walk for approximately 6 hours in an 8-hour day with normal breaks; occasionally climb ramps or stairs, but never climb ladders, ropes, or scaffolds; can perform occasional balancing, stooping, kneeling, crouching, and crawling; can occasionally reach overhead, frequently in other directions. The ALJ also noted he should avoid smoke, dust, and respiratory irritants.

Mentally, he retains the ability to understand and follow simple instructions and directions; perform simple tasks with supervision and independently. The ALJ went on to say, maintain attention/concentration for simple tasks; regularly

attend to a routine and maintain a schedule; can relate to and interact with others to the extent necessary to carry out simple tasks, but should avoid work requiring more complex interaction or joint effort to achieve work goals. The ALJ went on to say he should have no more than incidental contact with the public and can handle reasonable levels of simple work-related stress, in that he can make occasional simple decisions directly related to the completion of his tasks in a stable, unchanging work environment.

The ALJ further concluded the claimant is unable to perform any past relevant work, see 20 C.F.R. 404.1565. The ALJ concluded, considering the claimant's age, education, work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that the claimant can perform, see 20 C.F.R. 404.1569 and 40.1569(a). Finally, the ALJ's decision and conclusion was as follows: The claimant has not been under a disability, as defined in the Social Security Act, from May 29, 2015, through the date of this decision, 20 C.F.R. 404.1520(g). Based on the application for a period of disability and disability insurance benefits filed on January 29, 2016, according to the ALJ, the claimant is not disabled under Sections 216(i) and 223(d) of the Social Security Act.

In reviewing the briefs by the parties and the record, I believe that three issues in contention are before the

Court. The first is whether the ALJ properly weighed the opinion of Dr. Woznicki. The second is whether the ALJ properly assessed plaintiff's subjective symptoms. And then third, and lastly, is whether the substantial evidence supports -- whether substantial evidence supports the ALJ's step five finding.

I turn next to discussion with respect to my decision, discussion and analysis. The first issue of contention is whether the ALJ properly weighed the opinion of Dr. Woznicki. I find that the ALJ properly weighed the opinion of Dr. Woznicki and it is my conclusion. The Second Circuit has long recognized the treating physician rule set out in 20 C.F.R. 404.1527(c). The opinion of a claimant's treating physician as to the nature and severity of the impairment is given controlling weight so long as it is well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, see *Greek v. Colvin*, 802 F.3d 370, at 375, Second Circuit, 2015, quoting from *Burgess v. Astrue*, 537 F.3d 117, at 128, Second Circuit, 2008.

Application of the treating physician rule to Dr. Woznicki, in my conclusion, would be inappropriate because Dr. Woznicki is not plaintiff's treating physician, so my finding is that the ALJ was not required to treat Dr. Woznicki as a treating physician. The record contains no evidence of a doctor-patient relationship between plaintiff and Dr. Woznicki.

For example, Dr. Woznicki's name does not appear in any of plaintiff's treatment notes or medical records from the Community Clinic despite receiving treatment there between January 2017 and February 2018, see T. 599 through 715. Likewise, there's no evidence that any of plaintiff's progress reports were provided to Dr. Woznicki. When questioned during the hearing about plaintiff's treatment at Community Clinic, plaintiff did not mention Dr. Woznicki.

Furthermore, because there was no ongoing treating relationship between plaintiff and Dr. Woznicki, Dr. Woznicki did not qualify as a treating physician, see *Camarata v. Colvin*, 14-CV-0578, that can be found at 2015 WL 4598811, at 14 through 16, Northern District of New York, July 29, 2015, Judge D'Agostino, finding that the Appeals Council appropriately did not apply the treating physician rule to a medical source statement that was prepared by a nurse practitioner and registered nurse, then co-signed by a physician where the physician did not have an ongoing treatment relationship with the plaintiff.

Now, while the ALJ failed to explicitly apply the *Burgess* factors when assigning the weight to Dr. Woznicki, for the reasons stated in the defendant's memorandum of law, I do find that even if Dr. Woznicki was a treating physician, a searching review of the record assures me that the substance of the treating physician rule was not traversed, see *Estrella v.*

Berryhill, 925 F.3d 90, at 95 through 96, Second Circuit, 2019.

Now, the second issue of contention is whether the ALJ properly assessed plaintiff's subjective symptoms. I find and conclude that the ALJ properly assessed plaintiff's testimony. The evaluation of symptoms involved a two-step process. First, the ALJ must determine, based upon the objective medical evidence, whether the medical impairments could reasonably be expected to produce the pain or other symptoms alleged, see 20 C.F.R. Sections 404.1529(a), 416.929(a) and (b). If so, at the second step, the ALJ must consider the extent to which the claimant's alleged functional limitations and restrictions due to pain or other symptoms can reasonably be accepted as consistent with the objective medical evidence and other evidence to decide how the claimant's symptoms affect her ability to work, see *Barry v. Colvin*, 606 F. App'x 621 at 623, Second Circuit, 2015, citing inter alia 20 C.F.R. Section 404.1529(a), see also *Genier v. Astrue*, 606 F.3d, at 49. If the objective medical evidence does not substantiate the claimant's symptoms, the ALJ must consider the other evidence, see *Cichocki v. Astrue*, 534 F. App'x 71, at 76, Second Circuit, 2013.

I find that the ALJ did not merely provide a single conclusory statement and instead provided a lengthy, detailed, and thorough discussion of the medical treatment evidence that indicated plaintiff's allegations were inconsistent with the medical evidence, and the ALJ adequately explained his reasoning

for discounting the severity of plaintiff's subjective symptoms, see T. 22 through 23, also T. 166 to 169, 171 to 173, 178 to 179, and lastly at 181. I find that the ALJ properly relied on plaintiff's testimony, T. 154 to 194, that he could do household chores and care for himself without assistance in assessing his subjective complaints.

Moreover, the ALJ properly relied on plaintiff's admissions about his minimal treatment for mental health or physical issues, in finding that his claims of total disability were unsupported, see *Sickles v. Colvin*, 12-CV-774, that can be found at 2014 WL 795978, at 22, and that is a Northern District of New York, February 27, 2014, case. In addition to discussing inconsistent evidence about plaintiff's daily activities and minimal treatment, the ALJ also appropriately discussed the objective medical evidence that was inconsistent with plaintiff's subjective complaints, see T. 19 through 20, T. 495 to 499, also T. 500 to 503, T. 522, T. 554, and T. 599. Additionally, see *Suttles v. Berryhill*, 756 F. App'x 77 at 78, Second Circuit, 2019, wherein it states Suttles's testimony regarding her symptoms was contradicted by the medical evidence. The ALJ properly assessed plaintiff's subjective symptoms.

I turn next to the seven factors pursuant to 20 C.F.R. 404.1529(c)(3)(i) through (vii). In addition, the ALJ must assess the claimant's subjective complaints by considering the record in light of the following symptom-related factors:

One, claimant's daily activities; two, location, duration, frequency and intensity of claimant's symptoms; three, precipitating and aggravating factors; four, the type, dosage, effectiveness, and side effects of any medication taken to relieve symptoms; five, other treatment received to relieve symptoms; six, any measures taken by the claimant to relieve symptoms; and lastly, seven, any other factors concerning the claimant's functional limitations and restrictions due to the symptoms, see 20 C.F.R. Section 404.1529(c)(3), and 416.929(c)(3). The ALJ must provide specific reasons for the determination, see *Cichocki*, 534 F' App'x, at 76.

However, the failure to specifically reference a particular relevant factor does not undermine the ALJ's assessment as long as there is substantial evidence supporting the determination, see also *Del Carmen Fernandez v. Berryhill*, 2019 WL 667743, at 11, and that case citing *Rousey v. Commissioner of Social Security*, 285 F. Supp. 3d 723, at 744, a Southern District of New York 2018 case, wherein it states remand is not required where the evidence of record allows the court to glean the rationale of an ALJ's decision, citing *Cichocki*, 534 F. App'x, at 76, which is quoting *Mongeur v. Heckler*, 722 F.2d, at 1040.

Although the ALJ, here, did not explicitly list all of these factors, he did consider several of them. And in any event, this Court was able to glean the rationale of the ALJ's

decision.

I next, and lastly, turn to the third issue of contention, and that is whether substantial evidence supports the ALJ's step five finding. At step five of the disability analysis, the burden shifts to the ALJ to demonstrate that there's work in the national economy that plaintiff can perform, see *Poupore v. Astrue*, 566 F.3d 303, at 306, Second Circuit, 2009.

At step five, the ALJ had to demonstrate in this case that plaintiff was capable of performing jobs that existed in significant numbers in the national economy, see 20 C.F.R. 404.1520(a)(4)(v). The vocational expert, as I call the VE, testified that a hypothetical individual with plaintiff's RFC could perform the representative jobs of marker, also mail clerk, and lastly a cleaner, see T. 186 to 187.

As to the issue of overhead reaching, I find that the VE's testimony resolved any conflict between the overhead reaching requirements in the hypothetical question and the job of marker. The VE's testimony that, based on his knowledge of how the marker job was performed, it did not require more than occasional overhead reaching, was sufficient to resolve any conflict with the Dictionary of Occupational Titles, known as DOT for short, see *Michelle B. V. Commissioner of Social Security*, 18-CV-171, 2019 WL 464975, at 10, n.18, Northern District of New York, February 6, 2019, wherein it states VE's

testimony that she was using her experience to explain a discrepancy with a lifting requirement in the DOT was sufficient to resolve any conflict concerning lifting, see *Vanbenschoten v. Commissioner of Social Security*, 16-0057, that can be found at 2017 WL 1435741, at 7, a Northern District of New York, April 21, 2017, case, and it states ALJ can accept VE testimony that contradicts the DOT where it is based on the VE's practical experience.

Where the VE testified in this particular case that there were about 141,000 marker jobs in the national committee, see T. 186, that job alone was sufficient to meet the agency's burden at step five, see T. 186 through 187, see also *Rosa v. Commissioner of Social Security*, 14-1145, that can be found at 2015 WL 7574516, at 6, it is Northern District of New York, November 4, 2015, R&R adopted, at 2015 WL 7573222, Northern District of New York, November 25, 2015. It states courts have held that numbers varying from 9,000 upwards constituted significant.

The ALJ's statement that the VE's testimony is consistent with the information in the DOT, given that there was a conflict with overhead reaching, and to the extent that the ALJ's statement could be considered error because there was a conflict which was resolved, any error is harmless due to the detailed discussion at the hearing, see *Michelle B.*, 2019 WL 464975, at 10, n.18. At step five, the ALJ demonstrated that

plaintiff was capable of performing jobs that existed in significant numbers in the national economy. That was my conclusion with respect to the issue of overhead reaching and the VE's testimony as it related to the interaction with the DOT.

I now turn to the issue of contact with the public. However, I find that, with respect to the limitation on plaintiff's contact with the public, there is not substantial evidence to support the ALJ's finding at step five. The ALJ found that the plaintiff's RFC included no more than incidental contact with the public. The VE testified that plaintiff could perform the work of marker, housekeeping/cleaner, and mail clerk. The DOT definitions of those jobs indicate that they involve employee interaction with people that is not significant. However, the VE's testimony did not provide any explanation to the ALJ as to how his testimony conflicted with the DOT or a reasonable basis to support the testimony.

The Court cannot determine whether, "not significant," means, "no more than incidental," or, "brief and superficial," or, "low contact," or some other level of contact with coworkers and the public. It is the VE's job to provide information and then the ALJ has the affirmative duty to identify and resolve any conflict between the VE's testimony and the DOT before relying on such testimony, see *Patti v. Colvin*, 13-CV-1123, it's found at 2015 WL 114046, at 6, Western District

of New York, January 8, 2015, see also *Abbruscato v. Berryhill*, 16-CV-0117, that's found at 2017 WL 2531713, at 3, a Western District of New York, June 12, 2017, case. And in there it states, although the DOT indicates that employee interaction with people is not significant in the mailroom clerk and housekeeping jobs, the Court cannot determine whether this means brief and superficial contact or low contact or some other level of contact with coworkers and the public. In that, the Court went on to say it is the VE's job to provide this information, and then the ALJ has an affirmative duty to identify and resolve any conflict between the VE's testimony and the DOT before relying on such testimony. On that point, see also *White v. Colvin*, 2016 WL 1555709, at 6, it's a Northern Distinct of Illinois, April 18, 2016, case, remanding where, among other things, the VE conceded that DOT indicated that jobs of hand packager, mail clerk, and housekeeper involved contact with the public, coworkers, and supervisors, and that it didn't say how frequently. That certainly could run afoul of the limitation to only occasional contact with coworkers, and most likely would run afoul of the limitation to only incidental contact with the public, but the ALJ did not resolve this conflict.

Accordingly, in this particular case, it is my decision to remand this case and that remand is required. The remand is required primarily on this last issue that I just covered, contact with the public.

Based on the findings as set forth herein on the record, plaintiff's motion for judgment on the pleadings, Docket No. 12, is granted, the Commissioner's motion for judgment on the pleadings, Docket No. 16, is denied, and this matter is remanded to the Commissioner for further administrative proceedings consistent with this opinion and decision pursuant to sentence four of 42, United States Code, Section 405(g). That's the decision of the Court.

Ms. Krupar, anything else?

MS. KRUPAR: No, your Honor. Thank you for your time today.

THE COURT: All right. Ms. Stewart?

MS. STEWART: Nothing from me. Thank you.

THE COURT: All right. Very good. Thank you both for excellent briefs and also very, very good arguments. And my decision and order that I just set forth on the record will be transcribed and will be available for the parties in addition to, as I indicated, the summary order, which will be literally a two-page order simply summarizing my final result.

But, otherwise, thank you both for very good work product, have a good rest of the week, and court stands adjourned. Thank you both.

MS. KRUPAR: Thank you.

MS. STEWART: Thank you.

(Time noted: 10:58 a.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR, Official U.S. Court Reporter, in and for the United States District Court for the Northern District of New York, DO HEREBY CERTIFY that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 30th day of July, 2020.

X Hannah F. Cavanaugh

HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR

Official U.S. Court Reporter